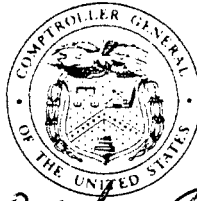


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Mr. Fitzmaurice
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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548*[Protest of Bid Rejection for Lateness]*

FILE:

B-200873

DATE: November 18, 1980

MATTER OF:

Northwest Instrument

DIGEST:

1. Where protester's initial submission is without legal merit, GAO will render decision without obtaining report from agency.
2. Bid received approximately 30 minutes after time set for bid opening was properly rejected as late since late receipt was due to circumstances under protester's control or those that reasonably could have been anticipated.
3. Contract may be awarded even though agency received only one bid.
4. Importance of maintaining integrity of competitive bidding system outweighs any monetary savings Government might receive from considering otherwise late bid.

Northwest Instrument (Northwest) protests the National Oceanic and Atmospheric Administration's (NOAA) refusal to consider its bid which was submitted after the time specified in invitation for bids No. NASD-80-00240 for the receipt of bids.

According to Northwest's protest letter, its representative intended to deliver the bid by hand to NOAA shortly before the 11 a.m. bid opening scheduled for October 8, 1980. However, just as he was preparing to leave his office, the representative was interrupted by an important customer. In addition, heavy traffic caused a further delay. Consequently, Northwest's bid was not delivered to NOAA until approximately 11:30 a.m. NOAA, however, refused to accept the bid, returned it to Northwest unopened, and awarded the contract to the only other company that submitted a bid.

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Northwest argues that it should have been granted a reasonable grace period and that "being 30 minutes late does not suggest lack of responsiveness." Northwest also argues that despite being late its bid should have been considered since to do otherwise allows the contract to be awarded in a noncompetitive situation. Finally, Northwest contends that it is in the best interests of the Government to have its bid considered since the bid offers a savings of approximately \$4,000 over the bid that was accepted.

This case falls within the ambit of our decisions which hold that where it is clear from a protester's initial submission that the protest is without legal merit, we will decide the matter on the basis of the protester's initial submission without requesting a report from the procuring activity pursuant to our Bid Protest Procedures, 4 C.F.R. part 20 (1980). O.D.N. Productions, Inc., B-194312, April 13, 1979, 79-1 CPD 267.

Northwest argues that the rigid application of the solicitation's late bid provision produces a harsh result in a case such as this. It sees nothing wrong with accepting a bid that is late so long as it falls within a "reasonable grace period." However, in Unitron Engineering Co., Inc., B-194707, August 27, 1979, 79-2 CPD 155, we explained the strong policy reason favoring the late bid rule as follows:

"* * * Since bids are opened publicly, allowing consideration of a late bid, even one which is a few minutes late because of unusual circumstances over which the bidder had no control, would lead to apprehension among timely bidders that the late bid was unfairly prepared after bid opening. The maintenance of the integrity and fairness of the procuring process is more important than the loss that a late bidder or the Government suffers from the rejection of a late, low bid. Therefore, we have held that all late bids must be rejected except for those permitted in the exact circumstances provided for in the invitation. Southern Oregon Aggregate, Inc., B-190159, December 16, 1977, 77-2 CPD 477. * * *

We have also held that it is the bidder's responsibility to insure that its bid is delivered to the proper place at the proper time. O.D.N. Productions, Inc., supra. Therefore, since Northwest's late submission was due to circumstances under its control or those that reasonably could have been anticipated, NOAA was required to reject the bid as late.

As to Northwest's argument that the contract was awarded without any real competition, we have held that an award can be made to the only bidder on a solicitation provided there has been a significant effort to obtain competition, a reasonably priced bid has been received, and there has been no deliberate attempt to exclude a particular firm. Culligan Incorporated, Cincinnati, Ohio, 56 Comp. Gen. 1011 (1977), 77-2 CPD 242. Therefore, under the facts presented, there was nothing improper about NOAA making an award to the only company that submitted a bid.

Finally, regarding Northwest's claim that acceptance of its late bid would provide a significant monetary savings to the Government, we have held that the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the Government might realize a monetary savings in a particular procurement by considering a late bid. Gross Engineering Company--Reconsideration, B-193953, April 24, 1979, 79-1 CPD 285. Consequently, the possibility that acceptance of Northwest's bid might provide a savings of approximately \$4,000 to the Government is not a basis to consider its otherwise late bid since it is more important for all bidders to believe that they are competing on an equal basis and in accordance with the terms of the solicitation.

Therefore, the protest is summarily denied.

Harry R. Van Cleave
For The Comptroller General
of the United States